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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,676	12/05/2003	Luis E. Luciani JR.	200314489-1	3179

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EXAMINER	
WALSH, JOHN B	

ART UNIT	PAPER NUMBER
2151	

NOTIFICATION DATE	DELIVERY MODE
03/19/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/729,676	LUCIANI ET AL.	
	Examiner	Art Unit	
	John B. Walsh	2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11/30/07*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8 and 11-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8 and 11-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 20 is objected to because of the following informalities: Claim 20 recites "the computer system of claim 20" and is therefore dependent upon itself. The claim will be considered as being dependent upon claim 15. Appropriate correction is required.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-5, 8, 11 and 13-19 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 7-12 of copending Application No. 10/728,465. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are not patentably distinct and anticipate the claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-8 and 11-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Publication "Integrated Lights-Out Technology: Enhancing the Manageability of Proliant Servers".

As concerns claim 1, a system comprising: a CPU (inherent to have a CPU); a memory (page 1, paragraph 1) coupled to the CPU, the memory storing programs executable by the CPU; and a system management processor (page 1, paragraph 1-RISC processor; page 3-ASIC) coupled to the CPU, wherein the system management processor is operable selectively to establish hardware-based remote console sessions (page 3, fourth paragraph) and software-based remote console sessions (page 3, fourth paragraph-firmware).

As concerns claim 2, the system of claim 1, wherein the programs executable by the CPU support software-based remote console sessions (page 3, paragraph 2 - software and firmware).

As concerns claim 3, the system of claim 2, wherein the programs executable by the CPU enable data transfer between the system and the system management processor (the term "enable" is not a positive limitation since it only enables data transfer and does not positively

recite that the act of data transfer ever takes place; page 3, paragraph 4 – subsystem can monitor host server thus data transfer takes place).

As concerns claim 4, the system of claim 1, wherein the system management processor comprises an application-specific integrated circuit (page 3).

As concerns claim 5, the system of claim 4, wherein the system management processor supports hardware-based remote console sessions (page 3, fourth paragraph) and software-based remote console sessions (page 3, fourth paragraph).

As concerns claim 6, the system of claim 1, wherein the system management processor is powered independently from the system (page 5, paragraph 1).

As concerns claim 7, the system of claim 1, wherein when operating a hardware remote console the system management processor tracks changes in a video memory, analyzes the changes, compresses data describing the changes, and sends the compressed data to remote locations (page 7, paragraph 1).

As concerns claim 8, a system comprising: a host computer comprising: a CPU (inherent to have a CPU); a memory (page 1, paragraph 1) coupled to the CPU; and a system management processor (page 1, paragraph 1-RISC processor) coupled to the CPU and memory; a remote computer coupled to the system management processor by way of a communication network (page 6, paragraph 4); wherein the remote computer accesses the host computer by way of the system management processor to initiate a remote console session; and wherein the system management processor selectively switches between a software-based remote console session (page 3, fourth paragraph; page 6-virtual presence, remote console) and a hardware-based remote console session (page 3, fourth paragraph; page 4, line 9-hardware based);

wherein the remote computer further comprises a software-based remote console applet program (page 9, paragraph 3) and a hardware-based remote console applet program (page 9, paragraph 3), the software-based remote console applet program supporting software-based remote console sessions and the hardware-based remote console applet program supporting hardware-based remote console sessions; wherein the hardware-based remote console applet program controls the software-based remote console applet program (page 11, paragraph 2).

As concerns claim 11, the system of claim 8, wherein the system management processor controls the hardware-based remote console applet program and the software-based remote console applet program (page 3, last paragraph).

As concerns claim 12, the system of claim 8, wherein the system management processor is powered separately from the system (page 5, paragraph 1).

As concerns claim 13, the system of claim 8, wherein the memory comprises programs executable by the CPU, the programs supporting software-based remote console sessions (page 3, fourth paragraph; page 6-virtual presence, remote console).

As concerns claim 14, the system of claim 13, wherein the programs enable communications between the CPU and the system management processor (the term "enable" is not a positive limitation since it only enables data transfer and does not positively recite that the act of data transfer ever takes place; page 3, paragraph 4 – subsystem can monitor host server thus data transfer takes place).

As concerns claim 15, a computer system, comprising: a means for executing programs (inherent to have a CPU); a means for storing programs (page 1, paragraph 1) for execution coupled to the means for executing; and a means for providing remote console (page 6,

paragraph 4) to the computer system coupled to the means for executing; wherein the means for providing selectively establishes hardware-based remote console sessions (page 3, fourth paragraph; page 4, line 9-hardware based) and software-based remote console sessions (page 3, fourth paragraph; page 6-virtual presence, remote console).

As concerns claim 16, the computer system of claim 15, wherein the means for storing further comprises programs for execution that support software-based remote console sessions (page 6, paragraphs 4-5).

As concerns claim 17, the computer system of claim 16, wherein the programs for execution facilitate communications between the computer system and the means for providing (page 3, paragraph 4 – subsystem can monitor host server thus data transfer takes place).

As concerns claim 18, the computer system of claim 15, wherein the means for providing comprises: an application-specific integrated circuit (page 3), the application-specific integrated circuit comprising a microcontroller; and a memory (page 1, paragraph 1) coupled to the application-specific integrated circuit.

As concerns claim 19, the computer system of claim 18, wherein the memory is used for communication between the means for providing and the computer system (page 1, paragraph 1-memory directly and indirectly aides in the performance of the system including communication).

As concerns claim 20, the computer system of claim 20, wherein when operating a hardware remote console the means for providing tracks changes in a video memory, analyzes the changes, compresses data describing the changes, and sends the compressed data to remote locations (page 7, paragraph 1).

Response to Arguments

6. Applicant's arguments filed November 30, 2007 have been fully considered but they are not persuasive.

The applicant argues the prior art does not disclose "selectively switching between hardware and software remote consoles as recited in claim 1. Claim 1 does not explicitly recite this limitation. Claim 1 recites the limitation of "operable selectively to establish hardware-based remote console sessions and software-based remote console sessions". The claims have been given the broadest reasonable interpretation and the claims are anticipated if only hardware-based session is selected.

The applicant argues the prior art does not disclose the features of claim 7 since the data is text data not "changes in a video memory". The claims have been given the broadest reasonable interpretation and the claim does not set forth any particular type or format of data, only data, and thus does not disqualify even "text" data.

The applicant argues the prior art does not disclose software or hardware based remote console applets supporting corresponding software and hardware remote console sessions. The claim have been given the broadest reasonable interpretation and the prior art reference anticipates the claims.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John B. Walsh whose telephone number is 571-272-7063. The examiner can normally be reached on Monday-Thursday from 7:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on 571-272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John B. Walsh/
Primary Examiner, Art Unit 2151